

MINUTES

**Town of Wappinger
Zoning Board of Appeals
January 26, 2016
Time: 7:00PM**

**Town Hall
20 Middlebush Road
Wappinger Falls, NY**

Summarized Minutes

Members:

Mr. Prager	Chairman	Present
Mr. Casella	Member	Present
Mr. Johnston	Member	Present
Mr. Galotti	Member	Present

Others Present:

Ms. Valk	Conflict Attorney for Town
Mrs. Roberti	Zoning Administrator
Mrs. Ogunti	Secretary

SUMMARY

Public Hearing:

Laura Hamedl	Variance Granted
RJA Holdings, Inc/Route 9D Project	Open & Closed Public Hearing Decision to be made on March 8, 2016

Discussion:

Martin Vanihel & Marybeth Martone	Public Hearing on February 9, 2016
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Mr. Casella: I have one amendment to the Agenda. I would like to get the January 12th Minutes on there. You did send them out but we want to get them approved so you want to add that to the Agenda. I would also like to adjust the Agenda by moving the Discussion to the top follow by the Public Hearing. There might be some lengthy discussions so we just want to get people out of here on time. If it's okay with the board, I would like to change that order on the Agenda.

Mr. Johnston: Motion to approve the Minutes for January 12, 2016.

Mr. Galotti: Second the motion.

Vote: All present voted aye.

Discussion:

Appeal No. 15-7570 Variance

Martin Vanihel & Marybeth Martone: Seeking an area variance Section 240-37 of District Regulations in an R-40 Zoning District.

-Where **25 feet** to the side yard property line is required, the applicant can only provide **18 feet** for an existing **10' x 23'** shed, thus requesting a variance of **7 feet**.

The property is located at **324 Cedar Hill Road** and is identified as **Tax Grid No. 6256-01-405947** in the Town of Wappinger.

Mr. Prager: Please come up and state your name and tell us what you need and why you need it.

Mr. Vanihel: Martin Vanihel, 324 Cedar Hill Road. We purchased the property in November of 2015. We received a letter indicating that there was a problem with this shed. We knew when we bought the house there was a problem with the variance. Our lawyer assured us that there would be no problems if we assumed the violation that we inherited until we have to sell or move it. We found out later on that we need to solve this problem right away and get the permit for it. That's why we are getting a variance so we don't have to tear the shed down.

Mr. Galotti: Do you know how long the shed has been up previous to you owning it?

Mrs. Roberti: We really don't because one part had a permit and the other didn't. The previous owner was very well aware when his house was being sold last fall. His final words to me were "take me to court". The gazebo on the property which is adjacent to the pool also did

not have a permit. However, there were other violations that he did clear up. When this was discovered, I think at this point, you must have been getting closer to closing and you weren't moving any further.

Mr. Prager: On the application for a Building Permit where it says size of structure, what is the actual size?

Mr. Vanihel: The shed is 10' x 23'.

Mr. Prager: Then it says there's something there that's 18' x 10'. Do we know what that mean?

Mrs. Roberti: It's a second shed that seems to be the shed had been attached and built off of the first shed and then a small porch. The rumor is the gentleman that sold it said prior to his owning the house, somebody's mother lived in there.

Mr. Prager: In the shed?

Mrs. Roberti: The second part might not have been a shed at one time.

Mr. Vanihel: It appears that it might have been a pool house of some kind.

Mr. Johnston: What's in there now?

Mr. Vanihel: It's just used for storage now.

Mr. Johnston: Is there electricity in there?

Mr. Vanihel: No electricity is running through it.

Mr. Casella: Barbara, will they need a variance on it?

Mrs. Roberti: It's connected to it so it's a structure. When I went on GIS, it looked like another house.

Mr. Johnston: Do you plan on doing anything else with it other than storage?

Mr. Vanihel: That was one of the selling points for us having the storage since the property is 2 acres.

Mr. Prager: We will do a site inspection this Saturday around 9:00am to see exactly what you are talking about. We will also schedule a Public Hearing for February 9, 2016.

Appeal No. 16-7572 (Variance)

Laura Hamedl: Seeking an area variance Section 240-37 of District Regulations in an R-20 Zoning District.

-Where **10 feet** to the rear yard property line is required for a shed under 200 sf, the applicant can only provide **4 feet** for an existing **10' x 12'** shed, thus requesting a variance of **6 feet**. The property is located at **61 Scott Drive** and is identified as **Tax Grid No. 6257-02-736541** in the Town of Wappinger.

Mr. Johnston: **Motion to open the Public Hearing.**

Mr. Galotti: Second the Motion.

Vote: All present voted Aye.

Mr. Casella: **Motion to close the Public Hearing.**

Mr. Johnston: Second the Motion

Vote: All present voted Aye.

Mr. Johnston: **Motion to grant this variance. The benefit cannot be achieved by any other feasible means. It's not undesirable to the character of the neighborhood. It is somewhat substantial but does not have an adverse effect to the environment and it's been there for a long time.**

Mr. Casella: Second the Motion.

Vote: All present voted Aye.

Appeal No. 16-7571 (Interpretation)

RJA Holdings, Inc./Route 9D Project: Seeking an Interpretation of the Determination from the Zoning Administrator in regards to whether the revised application of R.J.A. Holdings, Inc. falls within Section 5 of Local Law #1 of 2015 which states, as follows: The zoning amendment herein shall not apply to any property for which an application for site plan or sub-division approval has been properly filed with the Town of Wappinger as of the effective date of this local law. The property is located at **2054 Route 9D** and is identified as **Tax Grid No.6056-02-783920** in the Town of Wappinger.

Mr. Galotti: **Motion to open the Public Hearing.**

Mr. Johnston: Second the Motion.

Vote: All present voted Aye.

Ms. Cobb: Good evening Members of the Board, my name is Lisa Cobb and I represent the applicant RJA Holdings and the applicant Rob Macho is also here. The board has our submission so I don't want to belabor the point but for someone in the audience who may not know what we are seeking. We are asking the board for an interpretation of the code

section that a revised application concerning only one lot or the two that were formerly listed is the same application such that it would fall under Section 5 of the Local Law you just read. Mr. Cantor is in the audience and I note the letters to the board, he has questioned the assignment that was granted from Stewart's Shops to my client. I understand he said that he did a foil request and the assignment was not on file with anyone in the Town. It was my understanding that the Town had a copy of it.

Mrs. Roberti: We actually do.

Ms. Cobb: For the record, Mr. Cantor has just been provided with a copy of the assignment.

Lisa Cobb continues her review.

Mr. Johnston: In the original application are you saying the convenient store was also part of the original application?

Ms. Cobb: We didn't need to build a building to house the convenient store because they were going to use the Stewart's building. The use under the code was gasoline filling station with accessory convenient store so the code didn't change. The proposed is a gasoline filling station with convenient store so the use hasn't change.

Mr. Galotti: The use hasn't changed but doesn't the Site Plan change if you are adding another building?

Ms. Cobb: The Site Plan will need to be changed. The question is if there were no changes in the law, we came in and said instead of a 6 acre parcel we want to go down to 5 acres. Whether it would be deemed a new application and whether there would be new escrow or whether it would be an amendment to the existing Site Plan application.

Mr. Prager: I just want to make sure that I'm clear on the whole thing. Was the original variance was the two lots?

Mr. Cobb: There were two variances that we needed with the original application and the two variances that are needed with the present application are exactly the same. The two variances that will be needed is 1) The distance between two gas stations which is measured from the edge of Mr. Macho's property to Mr. Cantor's client gas station; and 2) The location to a residence which is measured from Mr. Macho's property to the neighboring property. Neither of the two variances is affected in anyway.

Mr. Cantor:

Let me begin by stating that the law in question talks about property for which an application for site plan or subdivision approval has been properly filed. At the time of the adoption of the local law, there was an application pending before the Planning Board by Stewart's for site plan approval to merge two lots for special permit approval because the gas station was a special permit use at the time. In connection with those three applications, Stewart's made an application to your board for two area variances setbacks. The assignment that I received in my foil request is an assignment of the application at the Zoning Board. There is no assignment of the site plan application or the subdivision application or the special permit application in the files of the Town. RJA saying to you that we are the assignees of Stewart's with regards to site plan and subdivision approvals which are pending at the time of the local laws is based on the information from the Town's files is incorrect. To the best of my knowledge, there is no concept of assigning an application.

The applicant before you this evening is a different applicant. The applicant at the time of the local law was Stewart's and it's now RJA. It's not the same property, it a piece of the same property. As far as I know, I am not aware of any concept of assigning an application. The applicant before you is a different applicant than the applicant at the time of the local law. Stewart's is now RJA. The application was to take two properties and one that contains the existing and continuing Stewart's store and the other, the existing property next to it to join them together to continue the Stewart's Shop where it is and to add gas pumps on the RJA's property. The amended request is to delete the Stewart's property to build a convenient store on the RJA property. If you allow this application in your decision to go forward that if you reversed Barbara's determination. The local law in question did not grandfather special use permits, it grandfathers site plans and subdivisions applications.

If this goes far enough, I will be exerting that this is not a permitted use. I will urge that you consult with your counsel, Becky Valk and when you are done deliberating affirm Barbara's decision that this is a different application by a different applicant and for a different development and cannot go forward.

Mr. Casella:

Motion to go into Executive Session.

Mr. Galotti:

Second the Motion.

Vote:

All present voted Aye.

Mr. Johnston: **Motion to come out of Executive Session.**
Mr. Casella: Second the Motion.
Vote: All present voted Aye.

Mr. Galotti: **Motion to close the Public Hearing.**
Mr. Casella: Second the Motion.
Vote: All present voted Aye.

Mr. Prager: We will have a decision within 62 days. If we have the decision sooner, we will notify everybody.

Mr. Cantor: Is there a control date that we can put on our calendar?

Mr. Prager: March 8, 2016.

Respectfully Submitted,

Adjourned: 7:49 pm

Bea Ogunti
Secretary
Zoning Board of Appeals